These are the tentative rulings for civil law and motion matters set for Tuesday, March 27, 2012, at 8:30 a.m. in the Placer County Superior Court. The tentative ruling will be the court's final ruling unless notice of appearance and request for oral argument are given to all parties and the court by 4:00 p.m. today, Monday, March 26, 2012. Notice of request for oral argument to the court must be made by calling (916) 408-6481. Requests for oral argument made by any other method will not be accepted. Prevailing parties are required to submit orders after hearing to the court within 10 court days of the scheduled hearing date, and after approval as to form by opposing counsel. Court reporters are not provided by the court. Parties may provide a court reporter at their own expense.

EXCEPT AS OTHERWISE NOTED, THESE TENTATIVE RULINGS ARE ISSUED BY COMMISSIONER MICHAEL A. JACQUES AND IF ORAL ARGUMENT IS REQUESTED, ORAL ARGUMENT WILL BE HEARD IN DEPARTMENT 40, LOCATED AT 10820 JUSTICE CENTER DRIVE, ROSEVILLE, CALIFORNIA.

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1. M-CV-0053379 Federal National Mortgage Ass'n vs. Hampton, Malcolm

This tentative ruling is issued by the Honorable Colleen M. Nichols. If oral argument is requested, it shall be heard on March 27, 2012 at 8:30 a.m. in Department 32. Defendant Malcolm Hampton's demurrer to the complaint is sustained with leave to amend. The complaint as drafted is impermissibly ambiguous. As a preliminary matter, the court disagrees with defendant's assertion that the 3-day notice to pay or quit was defective because it did not name a "natural person" as the proper recipient of past-due rent. Plaintiff provides no authority, and the court has found none, to support the proposition that the California Legislature intended to require that a natural person's name be stated on the 3-day notice. A review of the legislative history for the 2001 amendment implementing these notice requirements reveals concern over situations where the landlord unilaterally changed the method of collecting or receiving rent payments from the tenant, leaving the tenant unsure of whom to pay, or how to contact the stated payee. The 3-day notice at issue plainly advises defendant of what entity to send rent to, who to make the check out to, and how to contact the entity by mail or phone if necessary. Sending payment as clearly stated in the 3-day notice would have unambiguously cured defendant's default in payment of the rent, and the information as stated in the 3-day notice satisfies the requirements of Code of Civil Procedure section 1161(2).

Nevertheless, the complaint itself is ambiguous and subject to demurrer for several reasons. Paragraph 2 of the form complaint requires an allegation of plaintiff's legal capacity to sue (i.e., individual over 18 years of age, corporation, partnership, etc.) Plaintiff fails to allege its legal capacity to sue as required, instead describing itself as "other: Federal National Mortgage Association." Restating its own name is not a proper allegation of legal capacity to sue. Paragraph 6 of the complaint conflicts with the lease agreement attached as Exhibit 1. Paragraph 6 states that on or about October 24, 2011, defendant Malcolm Hampton agreed to rent the premises by payment of $2,000 per month, by written agreement "made with Malcolm Hampton". Plaintiff then checks (b)(4) which describes "Malcolm Hampton" as "other: Imagine Property Management." The complaint thus incorrectly states that Malcolm Hampton entered into a lease agreement with Malcolm Hampton, and that Malcolm Hampton represents Imagine

Property Management ("IPM"). Although IPM signed the lease agreement attached as Exhibit 1, it did so as the "attorney-in-fact" for "landlord/owner" Fannie Mae. The parties to the lease agreement attached as Exhibit 1 are Malcolm Hampton and Fannie Mae. Finally, the complaint names the owner of the premises as "Federal National Mortgage Association", but the lease agreement names the owner of the premises as "Fannie Mae", with no explanation regarding the discrepancy.

The demurrer is sustained with leave to amend. Plaintiff must file its amended complaint by no later than April 3, 2012.

2. S-CV-0025681 Wells Fargo Bank, N.A. vs. Step Golf Associates, LLC, et al

The application for order of distribution by Intervenors Mike and Joyce Benoff, Brad and Suzette Eickman, George Brown, Richard and Beverly Brunner, Keith and Robin Caudle, Jack and Judy Cunningham, Guy and Madeline Davis, Richard and Debora Delzer, Kevin and Lynne Doyle, John Dutter, Joseph and Mary Ann Jammal, Dan and Diane Koellen, Ray and Kelli Peterson, Ray Putnam, Scott and Cathy Terpstra, James and Tina Treis, Guy and Linda Vasconcellos, Darryl and Lorraine Vasko, and Mark and Joan Walike (collectively, the "Benoff Intervenors") for distribution of funds pursuant to the settlement agreement entered into on February 17, 2012 is granted. The Benoff Intervenors are entitled to distribution in the amount of $509,521.00, payable to the Trust Account of the Law Office of Charles A. Tweedy, for the benefit of the Benoff Intervenors, to be paid out of the Escrow Funds deposited with the court.

The motion to enforce settlement agreement and application for order of distribution by defendant CapCar Realty 1.1, LLC is granted. CapCar Relaty 1.1 is entitled to distribution in the amount of $185,000.00, payable to the Allen Matkins Attorney Client Trust Account, for the benefit of CapCar Realty 1.1, LLC, to be paid out of the Escrow Funds deposited with the court.

The motion to enforce settlement agreement and application for order of distribution of interpleader funds by Intervenors Gary Gregory, Paul Bianchi, Albert Kin and Dan Lopp (collective, the "Gregory Intervenors") is granted. The Gregory Intervenors are entitled to distribution in the amount of $76,594.00, payable to the Peter E. Glick Attorney Client Trust Account, for the benefit of the Gregory Intervenors, to be paid out of the Escrow Funds deposited with the court. If oral argument is requested, Mr. Glick's request for telephonic appearance is granted. The court will contact counsel when the matter is called for hearing.

The motion to enforce settlement agreement and to distribute agreed upon funds by intervenor David L. McCoy, *in pro per*, is granted. Mr. McCoy is entitled to distribution in the amount of $14,271.34, to be paid out of the Escrow Funds deposited with the court.

The motion to enforce settlement agreement and to distribute agreed upon funds by intervenor Richard Broshar, *in pro per*, is granted. Mr. Broshar is entitled to distribution in the amount of $14,271.34, to be paid out of the Escrow Funds deposited with the court.

The motion to enforce settlement agreement and to distribute agreed upon funds by intervenor Shawn Bates, *in pro per*, is granted. Mr. Bates is entitled to distribution in the amount of $14,271.34, to be paid out of the Escrow Funds deposited with the court.

The motion to enforce settlement agreement and to distribute agreed upon funds by intervenor Richard Pasquini, *in pro per*, is granted. Mr. Pasquini is entitled to distribution in the amount of $8,562.82, to be paid out of the Escrow Funds deposited with the court.

The motion to enforce settlement agreement and to distribute agreed upon funds by intervenor Shawn Nelson, *in pro per*, is granted. Mr. Nelson is entitled to distribution in the amount of $14,271.34, to be paid out of the Escrow Funds deposited with the court.

The motion to enforce settlement agreement and to distribute agreed upon funds by intervenor Juli Hilton, *in pro per*, is granted. Ms. Hilton is entitled to distribution in the amount of $14,271.34, to be paid out of the Escrow Funds deposited with the court.

The motion to enforce settlement agreement and to distribute agreed upon funds by intervenor Dave Killer, *in pro per*, is granted. Mr. Killer is entitled to distribution in the amount of $8,562.82, to be paid out of the Escrow Funds deposited with the court.

The motion to enforce settlement agreement and to distribute agreed upon funds by intervenor Thomas S. Eddings, *in pro per*, is granted. Mr. Eddings is entitled to distribution in the amount of $14,271.34, to be paid out of the Escrow Funds deposited with the court.

3. S-CV-0026625 Zoccoli, Don, et al vs. Sun City Lincoln Hills, et al

Rulings on Objections

Plaintiff's objections are ruled on as follows: Objection Nos. 9 and 13 (as to first sentence only) are sustained. The remainder are overruled. Defendants' objections are ruled on as follows: Objection Nos. 3, 6, 8-14, and 18-20 are sustained. The remainder are overruled.

Ruling on the Motion

Defendants' motion for summary judgment is denied. Defendants' motion for summary adjudication is granted in part. Defendants bear the burden of persuading the court that one or more elements of each plaintiff's claims cannot be established, or that there exists a complete affirmative defense thereto. Code Civ. Proc. §§ 437c(a), (o)(1), (2), (p)(2). With respect to plaintiff's sixth cause of action for retaliation, the motion is denied. Plaintiff Don Zoccoli ("Zoccoli") raises a triable issue of disputed material fact with respect to whether defendants retaliated against him for an impermissible reason. The elements for retaliation under the CFRA are: (1) defendant is an employer covered by CFRA; (2) plaintiff is an employee eligible to take leave under the CFRA; (3) plaintiff exercised his right to take leave for a qualifying CFRA purpose; and (4) plaintiff suffered an adverse employment action, such as termination, fine or suspension, or other adverse discriminatory actions because of his exercise of his rights to CFRA. *Dudley v. Dept. of Transp.* (2001) 90 CalApp.4th 255, 261, 274.

Defendant Sun City Lincoln Hills Community Association, Inc. ("Sun City") is an employer covered by the CFRA (Pltf. UMF 3), and plaintiff was an employee eligible to take leave under the CFRA. (Pltf. UMF 1). Zoccoli alleges that he exercised his rights under the CFRA on two occasions. The first was when he purportedly told the Food and Beverage Director, Jerry McCarthy ("McCarthy"), that he needed to take time off to help his wife deal with her severe depression. Zoccoli also asserts that he informed McCarthy that he would miss a meeting scheduled for his day off to spend time with his wife and family. (Pltf. UMF 13). As a consequence of missing the meeting, Zoccoli was written up. (Pltf. UMF 17). Zoccoli also asserts that he was berated the following day in front of other staff members. (Pltf. UMF 20). Zoccoli subsequently received a very negative performance review from McCarthy. (Pltf. UMF 24). Zoccoli alleges that Sun City's actions after being informed that he would need to take time

off to deal with his wife's depression caused him to believe that if he attempted to take time off for this reason, he would be fired. (Pltf. UMF 22-23). Zoccoli sufficiently raises a triable issue of material fact that the write-up, followed by a verbal disciplining in front of staff in a humiliating manner, followed by an extremely negative review, could collectively constitute adverse employment actions.

The second purported request for CFRA leave was for Zoccoli's own medical issues. (Pltf. UMF 27). Zoccoli's request for leave was granted. (Pltf. UMF 28). However, a few days after his medical leave began, he was placed on 90-day probation for deleting emails. (Pltf. UMF 29-30). Zoccoli asserts that he was specifically instructed to delete the emails by the IT manager. (Pltf. UMF 30). Zoccoli sufficiently raises a triable question of material fact that he was subjected to an adverse employment action in that he was placed on 90-day probation for actions that Sun City had specifically instructed him to do.

Sun City asserts that it had legitimate, non-discriminatory reasons for its actions, because Zoccoli admittedly made mistakes in his job performance which made the discipline legitimate. However, Zoccoli raises a triable question of material fact that the supposedly legitimate reasons were a pretext for discriminatory action. In the first instance, Zoccoli alleges that he was written up for missing a meeting that was scheduled on his day off, even though he had previously informed McCarthy that needed to take time off to help care for his wife, and that he would not be able to attend the meeting. He also alleges that he was verbally abused by McCarthy the day he returned, in front of other employees. In the second instance, Zoccoli alleges that he was placed on 90-day probation for actions that Sun City had specifically instructed him to do.

As Zoccoli raises a triable question of disputed material fact with respect to his sixth cause of action for retaliation, he also raises a triable question of disputed material fact with respect to his fifth cause of action for failure to prevent retaliation. Therefore, defendants' motion for summary adjudication is denied with respect to the fifth cause of action for failure to prevent retaliation.

Defendants' motion for summary adjudication is granted with respect to Zoccoli's seventh cause of action for harassment. For plaintiff to state a claim for harassment under FEHA, the action must be "sufficiently pervasive so as to alter the conditions of employment and create an abusive working environment." *Aguilar v. Avis Rent A Car System, Inc.* (1999) 21 Cal.4th 121, 130-131. Plaintiff must prove that defendant's conduct: (1) would have interfered with a reasonable employee's work performance; (2) would have seriously affected the psychological well-being of a reasonable employee; and (3) that the employee was actually offended. *Id.* There must be a concerted pattern of harassment of a repeated, routine or generalized nature based on the plaintiff's membership in a protected class. *Id.* Harassment is conduct outside of the scope of necessary job performance. It does not include "commonly necessary personnel management actions," such as hiring and firing, job or project assignments, office or work station assignments, promotions or demotions, and performance evaluations. *Janken v. GM Hughes Electronics* (1996) 46 Cal.App.4th 55, 63.

Even assuming the truth of Zoccoli's allegations regarding the actions of Sun City and McCarthy, the actions complained about do not rise to the level of conduct that is so "sufficiently pervasive so as to alter the conditions of employment and create an abusive working environment." *Aguilar v. Avis Rent A Car System, Inc., supra*, 21 Cal.4th at 130-131. Plaintiff does not present evidence of a concerted pattern of harassment of a repeated, routine or generalized nature based on plaintiff's membership in a protected class.

Defendant's motion for summary adjudication is granted with respect to Zoccoli's ninth cause of action for wrongful termination. As a preliminary matter, Cook and McCarthy cannot be liable for the tort of wrongful discharge in violation of public policy. *Khajavi v. Feather River Anesthesia Med. Grp.* (2000) 84 Cal.App.4th 32, 53. Plaintiff admits that he voluntarily resigned, but alleges constructive discharge. When alleged wrongful termination is claimed to be by constructive discharge, plaintiff must show: (1) his working conditions at the time of his resignation were so intolerable or aggravated that (2) a reasonable person in his position would have been compelled to resign, and (3) the employer either intentionally created or knowingly permitted the intolerable working conditions. *Turner v. Anheuser-Busch, Inc.* (1994) 7 Cal.4th 1238, 1245-1246. "The conditions giving rise to the resignation must be sufficiently extraordinary and egregious to overcome the normal motivation of a competent, diligent, and reasonable employee to remain on the job to earn a livelihood and to serve his or her employer." *Id.* at 1246. Whether constructive discharge has occurred depends on the objective working conditions themselves, not the employee's subjective reaction to those conditions. *Gibson v. Arco Corp.* (1995) 32 Cal.App.4th 1628, 1636.

Even assuming the truth of Zoccoli's allegations regarding the actions of Sun City and McCarthy, the actions complained about do not rise to the level of conduct so intolerable or aggravated that a reasonable person in his position would have been compelled to resign. The actions complained about are not sufficiently extraordinary and egregious to overcome the normal motivation of a competent, diligent and reasonable employee to remain on the job. *Turner v. Anheuser-Busch, Inc., supra*, 7 Cal.4th at 1246.

4. S-CV-0026937 Caskey, Emily vs. Wal-Mart Corporation, et al

Wal-Mart Stores Inc.'s unopposed Motion for Leave to File a Cross Complaint is granted.

5. S-CV-0027567 Tolani, Tony, et al vs. Highlands Hotel Co., LLC, et al

RLI Insurance Company's motion for order determining good faith settlement is granted. The settlement agreement entered into between RLI Insurance Company ("RLI") and plaintiffs Tony Tolani, John D. Appleby, Stanley C. Jones, Guion Gregg III, James & Betsy Chaffin, Brent & Dana Jones, and John & Michelle Keller satisfies the factors stated in *Tech-Bilt, Inc. v. Woodward-Clyde & Assoc.* (1985) 38 Cal.3d 488, and is in "good faith" within the meaning of Code of Civil Procedure section 877.6.

The settlement amounts set forth in the settlement agreement are within the reasonable range of RLI's proportionate share of liability. RLI's liability on the bond is disputed, but even if an implied agreement existed that the co-sureties' contributive shares were to be in proportion to the penal amounts of the bonds, payment of one-half of each of the plaintiffs' respective earnest money deposits plus interest is not "so far 'out of the ballpark' ... as to be inconsistent with the equitable objectives of the statute." *Tech-Bilt, Inc. v. Woodward-Clyde & Assoc., supra*, 38 Cal.3d at 499-500. Indeed, it is expected that a settling party will pay less in settlement than the amount it would have paid if found liable at trial. *Id.*

Defendant International Fidelity Insurance Company ("IFIC") argues that the settlement is fundamentally unfair because RLI and IFIC were not co-sureties, but rather IFIC was the sub-surety, and RLI the principal surety. This argument is unpersuasive. There is no evidence that at

the time that IFIC issued the Blanket Surety Bond, RLI and IFIC understood that IFIC's liability under the bond would arise only if RLI was unable to perform. The Blanket Surety Bond issued by IFIC also does not reflect such an understanding. Sureties who are bound for the same obligation, for the same principal are co-sureties. *Associated Constructors, Inc. v. Paonessa* (1939) 13 Cal.2d 241, 243. IFIC and RLI are co-obligors as both share the same risk under the same Blanket Surety Bond for the same Purchase and Sale Agreements. Finally, the court disagrees that Code of Civil Procedure section 996.490(b) precludes a finding of good faith settlement under these circumstances. As IFIC has not made payment of the bond amount so as to discharge all liability on the bond (Code Civ. Proc. § 996.490(a)), it is not entitled to contribution.

If oral argument is requested, the requests of RLI, the Tolani plaintiffs, Bank of America and Ludek Fabinger for telephonic appearance are granted. The court will contact counsel when the matter is called for hearing.

6. S-CV-0027979 Wills, Devin vs. Golfland Entertainment Centers, Inc., et al

The Petition to Approve Compromise of Pending Action is granted. The minor is excused from attendance at the hearing.

7. S-CV-0028555 Morrison, Guy K., et al vs. Ford Motor Company

The motion for attorneys' fees is dropped. No moving papers were filed.

8. S-CV-0028627 Hern, Keith vs. Bailey, Lorin, et al

Defendants' motion for sanctions for failure to respond to ordered discovery is denied. A decision to order terminating sanctions requires a showing that the violation is willful, preceded by a history of abuse, and the evidence shows that less severe sanctions would not produce compliance with the discovery rules. Code Civ. Proc. § 2023.030(d); *Van Sickle v. Gilbert* (2011) 196 Cal.App.4th 1495, 1516. Moving party must show that the failure to comply is "willful." *Biles v. Exxon Mobil Corp.* (2004) 124 Cal.App.4th 1315, 1327. There is no notice of entry of order in the court's file indicating that the court's ruling on the underlying motion to compel discovery was ever served on plaintiff. Thus, defendants fail to establish plaintiff's willful failure to comply with the court order as defendants have not shown that plaintiff had notice of the court's ruling on the underlying motion to compel.

9. S-CV-0028827 Clemmer, James vs. Dance Hall Investors, Inc., et al

Plaintiff's Motion to Compel Verified Discovery Responses is granted. Unverified responses are "tantamount to no responses at all." (*Appleton v. Superior Court* (1988) 206 Cal.App.3d 632, 635-636.) Defendant Connie Zaragoza shall serve verified responses, without objections, to the form interrogatories and special interrogatories on or before April 13, 2012. The court grants the request to deem the matters encompassed in the requests for admissions as admitted.

The court also denies the request for sanctions. Sanctions are denied because the motion was not opposed. (Code Civ. Proc. § 2030.290(c); 2031.300(c).) Although California Rule of

Court, Rule 3.1348(a) purports to authorize sanctions if a motion is unopposed, the Court declines to do so, as the specific statute governing this discovery authorizes sanctions only if the motion was unsuccessfully made or opposed. Any order imposing sanctions under the California Rules of Court must conform to the conditions of one or more of the statutes authorizing sanctions. (*Trans-Action Commercial Investors, Ltd. v. Firmaterr Inc.* (1997) 60 Cal.App.4th 352, 355.) However, repeated conduct of failing to comply with discovery obligations may lead the Court to find an abuse of the discovery process and award sanctions on that basis. (*Laguna Auto Body v. Farmers Ins. Exchange* (1991) 231 Cal.App.3d 481.) The court will entertain a request for sanctions if Defendant Connie Zaragoza does not provide verified responses to Plaintiff within the aforementioned time set by the court.

10. S-CV-0029079 Wilkie, Carmen vs. Stout, Robert, et al

Defendants' demurrer to the complaint is sustained without leave to amend. Plaintiff's claims are barred by the applicable statute of limitations, which requires that an action for personal injury be filed within two years of the incident. Code Civ. Proc. § 335.1. Plaintiff alleges in her complaint that the accident causing her injuries occurred on April 17, 2009. The complaint was not filed until April 19, 2011. Leave to amend is not warranted here, where the complaint does not suggest on its face that it is capable of amendment and plaintiff has failed to make any showing that it can be amended to change its legal effect.

11. S-CV-0029179 Rorman, Edward Eugene vs. Placer County Transit

Appearance required on Clifford L. Carter's Motion to be Relieved as Counsel, and on the continued ex parte application to continue the trial.

12. S-CV-0029331 Azizkhan, Kiamars vs. First Franklin Fin. Corp., et al

Appearance required. The court notes for the record that moving party has not complied with the court's local rules, which require notice regarding the court's tentative ruling procedures to be stated in the notice of motion. Defendant Cal-Western Reconveyance Corporation ("Cal-Western") is directed to review and comply with Local Rule 20.2.3(B) for any future motions. Cal-Western's request for telephonic appearance is granted. The court will contact counsel when the matter is called for hearing.

Cal-Western's request for judicial notice is granted as to Exhibits 1-6. Cal-Western's unopposed motion for judgment on the pleadings is granted without leave to amend. A motion for judgment on the pleadings may be brought where the complaint fails to allege facts upon which relief may be granted. Code Civ. Proc. § 438(B)(ii). Plaintiff's eighth cause of action for wrongful foreclosure fails to allege facts sufficient to constitute a valid cause of action against Cal-Western. Plaintiff does not allege that he tendered, or has the ability to tender, the full amount due under the note. *US Cold Storage v. Great W. Sav. & Loan* (1985) 165 Cal. App. 3d 1214. The complaint does not allege facts showing that defendants lacked the authority to initiate foreclosure proceedings. Possession of the original note is not required under California law. Civ. Code §§ 2924 *et seq.*

13. S-CV-0029426 Palomera, Jose vs. Perez, Hunter, et al

The unopposed application to file complaint in intervention to recover on lien for worker's compensation benefits paid by Rezenberger, Inc. is granted. Rezenberger, Inc. shall file and serve its complaint-in-intervention by no later than April 10, 2012.

14. S-CV-0029671 Colby, Diane vs. Poidmore, Anthony et al

Defendants' motion to compel further responses to special interrogatories, set one, is denied. Plaintiff has served amended responses to special interrogatories, including a verification. Defendants' request for sanctions is denied.

Defendants' motion to compel further responses to request for production of documents, set one, is granted. Although plaintiff asserts that she has produced responsive documents, the written responses to the requests for the documents ambiguously state that her response is limited based on her objections. Plaintiff's responses make it impossible for defendants to discern whether plaintiff has actually withheld any documents on grounds of privilege. To be effective, the objection must identify with particularity the specific document or evidence demanded as to which the objection is made. Code Civ. Proc. § 2031.240(b). Further, plaintiff's objections on the grounds of confidentiality and attorney work product lack merit.

The court notes that plaintiff provided a supplemental response as to Request No. 16 only. This supplemental response is also insufficient in that it does not comply with the Code of Civil Procedure. Plaintiff identifies particular documents, but fails to state whether or not she is complying or has complied with the request by producing responsive documents. Code Civ. Proc. § 2031.210(a). Plaintiff must serve amended verified responses to the Request for Production of Documents, Set One, without objections on the grounds of confidentiality or attorney work product. With respect to request number 16, plaintiff must specify whether she will comply with the request or is unable to comply. Defendants' request for sanctions is denied.

15. S-CV-0029709 Grossner, Thomas Vincent vs. Flanagan, Conor

The motions to compel were dropped by the moving party.

16. S-CV-0029759 Ratliff, Michael W., et al vs. Lorica, Cynthia, et al

Defendant Sweet Homes, Inc.'s motion to set aside default and default judgment and for stay of execution is denied. There is no proof of service in the court's file indicating that the motion was served on the other parties to the action.

17. S-CV-0029763 GAWFCO Enterprises, Inc. vs. CEMO Business Center, et al

The OSC re: preliminary injunction is dropped. The parties have filed a notice of settlement. The case management conference scheduled for March 27, 2012 at 10:00 a.m. is dropped. An OSC re: settlement is set for July 17, 2012 at 11:30 a.m. in Department 40.

18. S-CV-0030053 Smith, Scott, et al vs. Centex Real Estate Corp., et al

The motion to compel arbitration is continued to April 17, 2012 at 8:30 a.m. in Department 32 to be heard by the Honorable Colleen M. Nichols.

19. S-CV-0030060 Pacific Bell Telephone Co. vs. Tim Lewis Communities

Appearance required on the application for Paul R. Franke, III for admission *Pro Hac Vice.* Counsel is reminded that Local Rule 20.2.3 requires notification of the court's tentative ruling procedure be contained in the notice of motion.

The unopposed application is granted.

20. S-CV-0030133 JPMorgan Chase Bank, N.A. vs. NHJV-Tahoe-Phase 1, G.P.

This tentative ruling is issued by the Honorable Colleen M. Nichols. If oral argument is requested, it shall be heard on March 27, 2012 at 8:30 a.m. in Department 32. Plaintiff's motion for leave to amend complaint is granted. Although defendant objects on the grounds that plaintiff's notice of motion fails to include the tentative ruling notice required by Local Rule 20.2.3B, plaintiff promptly corrected the omission, and defendant does not contend that it is in any way prejudiced. Defendant does not otherwise object to plaintiff's motion for leave to amend. The court declines to deem the proposed amended pleading filed as of the date of the motion. Plaintiff shall file its first amended complaint by no later than April 10, 2012.

21. S-CV-0030449 Alvarez, Michael R. vs. JPMorgan Chase Bank, et al

The demurrer of defendants JPMorgan Chase Bank, N.A. and California Reconveyance Company to the complaint is sustained without leave to amend. Defendants' request for judicial notice is granted as to Exhibits A-H.

Plaintiff's first cause of action for fraud, second cause of action for intentional misrepresentation, and fourth cause of action for violation of Civil Code section 1572 (actual fraud) fail to state a valid causes of action against moving defendants. Plaintiff fails to allege these causes of action with requisite specificity. *Lazar v. Superior Court* (1996) 12 Cal.4th 631, 645. When pleading fraud against corporate defendants, plaintiffs must specify the identity of the person who made the misrepresentation, his authority to speak on behalf of the corporation, and when and to whom the representation was made. *Tarmann v. State Farm Mut. Auto Ins. Co.* (1991) 2 Cal.App.4th 153, 157. Plaintiff also fails to allege justifiable reliance. *Engalla v. Permanente Medical Group, Inc.* (1997) 15 Cal.4th 951, 976. "[S]pecific pleading is necessary to 'establish a complete causal relationship' between the alleged misrepresentations and the harm claimed to have resulted therefrom." *Mirkin v. Wasserman* (1993) 5 Cal.4th 1082, 1092.

California non-judicial foreclosure statutes do not require production of the original note. Civ. Code §§ 2924 *et seq.* Under California law, a "trustee, mortgagee, or beneficiary, or any of their authorized agents" may conduct the foreclosure process. Civ. Code § 2924(a)(1). The beneficiary under a deed of trust, or its authorized agent, is entitled to record the notice of default in order to initiate foreclosure proceedings. *Id.* According to the documents attached to plaintiff's complaint, California Reconveyance Company ("CRC") was authorized to issue the notice of default. Further, the notice of default contains a declaration that tracks the language of

the statute, which complies with Civil Code section 2923.5. *See Mabry v. Superior Court* (2010) 185 Cal.App.4th 208, 235.

Plaintiff's third cause of action for violation of Civil Code section 2923.6 fails to state a valid cause of action against moving defendants. This statute does not impose a duty on servicers of loans to modify the terms of loans, and does not create a private right of action for borrowers. *See Mabry v. Superior Court, supra,* 185 Cal.App.4th at 211. There is no obligation on loan servicers to modify borrowers' loans. *Id.* at 223.

Plaintiff's fifth cause of action for violation of Business and Professions Code sections 17200 *et seq.* fails to state a valid cause of action against moving defendants. Plaintiff does not establish that he suffered injury and lost money or property as a result of unfair competition. *Peterson v. Cellco Partnership* (2008) 164 Cal.App.4th 1583, 1590. Plaintiff does not establish a specific law or laws that were violated, that defendants committed fraud, or that defendants were required to modify plaintiffs' loan. A defense to the predicate claim is a defense to the Unfair Competitions Law claim. *Lazar v. Hertz Corp.* (1999) 69 Cal.App.4th 1494, 1505.

Plaintiff's sixth cause of action to set aside a defective and wrongful foreclosure fails to state a valid cause of action against moving defendants. As already stated, documents of which the court may take judicial notice show that CRC was authorized to issue the notice of default. The declaration of due diligence attached to the notice of default is not required to be signed by a declarant with personal knowledge. *Mabry v. Superior Court, supra,* 185 Cal.App.4th at 233-234. A declaration that tracks the statutory language is sufficient. *Id.* at 235. Finally, plaintiff has no standing to challenge the foreclosure proceedings, as he fails to allege tender, or the ability to tender. *Arnolds Management Corp. v. Eischen* (1984) 158 Cal.App.3d 575, 579; *Karlsen v. Am. Sav. & Loan Ass'n* (1971) 15 Cal.App.3d 112, 121.

Plaintiff bears the burden of demonstrating how the complaint may be amended to cure the defects therein. *Assoc. of Comm. Org. for Reform Now v. Dept. of Indus. Relations* (1995) 41 Cal.App.4th 298, 302. A demurrer shall be sustained without leave to amend absent a showing by plaintiff that a reasonable possibility exists that the defects can be cured by amendment. *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318. The complaint does not suggest on its face that it is somehow capable of amendment and plaintiff fails to make any showing that the complaint can be amended to change its legal effect. The demurrer is sustained without leave to amend. If oral argument is requested, defendants' request for telephonic appearance is granted. The court will contact counsel when the matter is called for hearing.

22. S-CV-0030559 Holmes, Randolph, et al vs. Rocklin Park Place Condominiums

Plaintiffs' motion to consolidate actions is denied. Plaintiffs seek to consolidate the instant action with a small claims matter involving the same parties. Judgment in the small claims matter was entered on February 10, 2012, and the judgment has been appealed by plaintiffs. An appeal from a small claims judgment may not be consolidated with a related case pending in superior court, as doing so would violate prohibitions against pretrial discovery, jury trial and plaintiff's appeal applicable in small claims actions. *Acuna v. Gunderson Chevrolet, Inc.* (1993) 19 Cal.App.4th 1467, 1472.

23. S-CV-0030645 Graves, Gene, et al vs. Bank of America, N.A., et al

The OSC re: preliminary injunction is continued to May 31, 2012 at 8:30 a.m. in Department 40.

These are the tentative rulings for civil law and motion matters set for Tuesday, March 27, 2012 at 8:30 a.m. in the Placer County Superior Court. The tentative ruling will be the court's final ruling unless notice of appearance and request for oral argument are given to all parties and the court by 4:00 p.m. today, Monday, March 26, 2012. Notice of request for oral argument to the court must be made by calling (916) 408-6481. Requests for oral argument made by any other method will not be accepted. Prevailing parties are required to submit orders after hearing to the court within 10 court days of the scheduled hearing date, and after approval as to form by opposing counsel. Court reporters are not provided by the court. Parties may provide a court reporter at their own expense.